

ORDINANCE NO. 28528

AN ORDINANCE OF THE CITY OF SAN JOSÉ ESTABLISHING RULE 20A UNDERGROUND UTILITY DISTRICT ALONG TULLY ROAD, BETWEEN KENOGA DRIVE AND 720 FEET WEST OF SENTER ROAD AND ALONG SENTER ROAD, BETWEEN PARROTT STREET AND 170 FEET SOUTH OF TULLY ROAD

WHEREAS, by Resolution No. 74818, the City Council of San José set a Public Hearing on April 14, 2009 at 1:30 P.M., in the Council Chambers of the City of San José, City Hall, 200 E. Santa Clara Street, at the corner of Fourth and East Santa Clara Streets, San José, to ascertain whether an Underground Utility District should be established in the area designated as the "TULLY ROAD UNDERGROUND UTILITY DISTRICT" (hereinafter called "District") and more fully described and shown on EXHIBITS A-1 and A-2 hereto; and

WHEREAS, written notice of the Public Hearing has been given pursuant to Section 15.24.050 of the San José Municipal Code, such hearing has been duly and regularly held, and all persons interested have been given a reasonable opportunity to be heard; and

WHEREAS, the criteria to form a district as set forth in San José Municipal Code Section 15.24.060 include:

- a. Removal of overhead wires and placement underground will eliminate an unusually heavy concentration of poles and overhead wires within the Proposed District; and
- b. Public streets or rights-of-way within the Proposed District are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic; and
- c. Public streets or rights-of-way within the Proposed District adjoin or pass

through a civic area or public recreation area or an area of unusual scenic interest to the general public; and

WHEREAS, pursuant to Section 15.24.060 of the San José Municipal Code, the City Council hereby finds and determines, based on evidence presented at the Public Hearing including the memorandum from the Director of Public Works dated March 23, 2009, and attached hereto as Exhibit A-3, that the above conditions exist within the proposed district, and public necessity, health, safety, and welfare require and it is in the general public interest that existing poles and overhead wires within the District be removed therefrom and thereafter prohibited and that wires and associated facilities within the District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated service be installed underground; and

WHEREAS, on January 28, 2009, this Ordinance was found to be adequately covered by the Addendum to a Mitigated Negative Declaration project file number PP08-160;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San José:

SECTION 1. The City Council hereby declares that a certain area of the City of San José described and shown on EXHIBITS A-1 and A-2, attached hereto, made a part hereof, and incorporated herein by reference is established as an underground utility district to be designated "TULLY ROAD UNDERGROUND UTILITY DISTRICT" and orders and requires that existing poles and overhead wires within said District be removed therefrom by the operators of the utilities and thereafter prohibited and that wires and associated facilities within said District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated service be installed underground subject to all of the provisions and exceptions contained in Part 3, Chapter 15.24, of the San José Municipal Code.

SECTION 2. Existing poles and overhead wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be removed by the operators of the utilities ("Utility Companies") no later than January 31, 2012.

Wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be installed underground no later than January 31, 2012. Persons owning any property as shown on the last equalized assessment roll served by overhead service drops which are extended from poles or spans located within the District must be ready to receive light, heat, power, telephone, telegraph, communications, television, or other similar or associated service by means of underground wires and facilities no later than January 31, 2012.

SECTION 3. The City Council does hereby request that the Pacific Gas & Electric Company and AT&T provide payment, computed pursuant to Rule 20 and Rule 32 respectively for the installation of no more than one hundred (100) feet (measured from the property line) of trenching, excavation, conduit installation, backfill, and surface restoration of each customer's individual service lateral to each qualifying premise affected by the District.

SECTION 4. The City Council does hereby request that the Pacific Gas & Electric Company pay, from the existing Rule 20A allocation, for the conversion of electric service panels to accept underground service, up to \$1,500 per service entrance, excluding permit fees.

SECTION 5. Within twenty (20) days of the effective date of this ordinance, the Director of

Public Works shall give written notice to all affected Utility Companies owning, possessing, or controlling any poles or overhead wires in the district and all owners and occupants of property affected by said District as required by Sections 15.24.150 and 15.24.160 of the San José Municipal Code.

SECTION 6. In lieu of a notice to the Utility Companies for disconnection of service pursuant to Section 15.24.140 of the San José Municipal Code, the Director of Public Works may give an additional notice to any noncompliant property owners or occupants in said District pursuant to Section 15.24.170 of the San José Municipal Code.

SECTION 7. All encroachment permits, agreements or contracts issued or approved with the Utility Companies related to undergrounding activities in the District shall include term(s) and/or condition(s) requiring compliance with the Mitigated Negative Declaration project file number PP08-257.

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SECTION 8. The Director of Public Works is hereby empowered to extend the time for any act required under this ordinance for the period of time and for the reasons set forth in Section 15.24.180 of the San José Municipal Code.

PASSED FOR PUBLICATION of title this 14th day of April, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

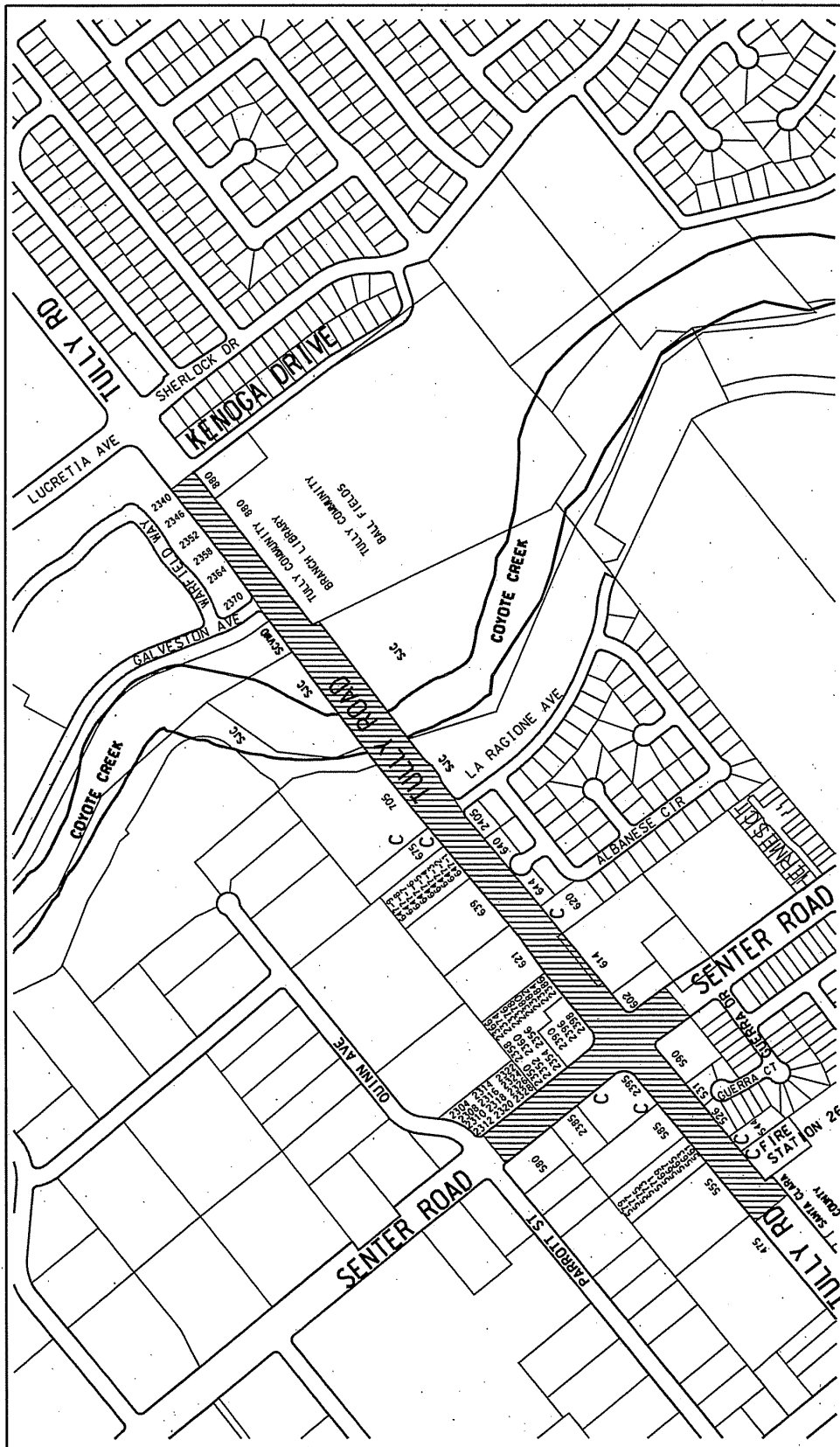
CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

Attachments:
Exhibit A-1, Map
Exhibit A-2, Description
Exhibit A-3, Staff Memorandum

EXHIBIT A-1



CITY OF SAN JOSE
TULLY ROAD
UNDERGROUND UTILITY DISTRICT

LEGEND

RULE 20A BOUNDARY

C - ELECTRICAL CONVERSION

NOT TO SCALE

EXHIBIT A-2

DESCRIPTION OF PROPOSED BOUNDARY OF AN UNDERGROUND UTILITY DISTRICT ALONG TULLY ROAD, BETWEEN KENOGA DRIVE AND 720 FEET WEST OF SENTER ROAD.

All that certain real property situated in the City of San José, County of Santa Clara, State of California, described as follows:

BEGINNING at a true point at the intersection of the westerly right-of-way line of Kenoga Drive and the southerly right of way line of Tully Road;

THENCE proceeding in a northwesterly direction 100'+/- perpendicular to the center line of Tully Road to a point of intersection with the northerly right-of-way line of Tully Road;

THENCE proceeding in a southwesterly direction 2,470'+/- along the northerly right-of-way line of Tully Road to a point of intersection with the easterly right-of-way line of Senter Road;

THENCE proceeding in a northwesterly direction 530'+/- along the easterly right-of-way line of Senter Road to a point of intersection with the southerly right-of-way line of Quinn Ave;

THENCE proceeding in a southwesterly direction 126'+/- perpendicular to the centerline of Senter Road to a point of intersection with the southerly right-of-way line of Parrott Street;

THENCE proceeding in a southeasterly direction 540'+/- along the westerly right-of-way line of Senter Road to a point of intersection with the northerly right-of-way line of Tully Road;

THENCE proceeding in a southwesterly direction 720'+/- along the northerly right-of-way line of Tully Road;

THENCE proceeding in a southeasterly direction 150'+/- perpendicular to the centerline of Tully Road to a point of intersection with the southerly right-of-way line of Tully Road;

THENCE proceeding in a northeasterly direction 710'+/- along the southeasterly right-of-way line of Tully Road to a point of intersection with the westerly right-of-way line of Senter Road;

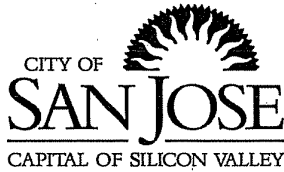
THENCE proceeding in a southeasterly direction 170'+/- along the westerly right-of-way line of Senter Road;

THENCE proceeding in a northeasterly direction 140' +/- perpendicular to the centerline of Senter Road to a point of intersection with the easterly right-of-way line of Senter Road;

THENCE proceeding in a northwesterly direction 160' +/- along the easterly right-of-way line of Senter Road to a point of intersection with the southerly right-of-way line of Tully Road;

THENCE proceeding in a northeasterly direction 2,460' +/- along the southerly right-of-way line of Tully Road to the true point of beginning.

EXHIBIT A-3



COUNCIL AGENDA: 03-10-09
ITEM:

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

**SUBJECT: TULLY ROAD RULE 20A
UNDERGROUND UTILITY
DISTRICT**

DATE: 02-17-09

Approved

Date

COUNCIL DISTRICT: 7

RECOMMENDATION

Adoption of a resolution to consider the establishment of a Rule 20A Underground Utility District along Tully Road, between Kenoga Drive and 720 feet west of Senter Road, and along Senter Road, between Parrott Street and 170 feet south of Tully Road, and setting a public hearing on April 14, 2009, at 1:30 p.m.

OUTCOME

Approval of this resolution will enable the Council to hold a public hearing resulting in the establishment of the Tully Road Underground Utility District. Establishment of this District will improve the appearance, pedestrian mobility and ease utility equipment maintenance within the area described above.

EXECUTIVE SUMMARY

The proposed underground utility district, as described above and depicted in Attachment A, will require utility companies to remove utility poles and aerial cables from the public right-of-way and install a new improved underground system. The proposed underground utility district is located along Tully Road, between Kenoga Drive and 720 feet west of Senter Road, and on Senter Road between Parrott Street and 170 feet south of Tully Road. This proposed project will compliment the newly constructed Tully Community Branch Library, the Tully Community Ball Fields, and other improvements by businesses and residents in the neighborhood. The project will be funded by utility company funds, designated by Rules 20A and 32 of the California Public Utilities Commission (CPUC), and the City's franchise agreement with Comcast. This proposal does not include actual construction activities at this time. An additional environmental review will be completed after the creation of the underground utility district when the engineering design is finished. This project will require archeological monitoring during construction.

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BACKGROUND

Through Rule 20A, the CPUC requires Pacific Gas and Electric Company (PG&E) to annually set aside funds for financing the undergrounding of overhead distribution facilities located on public streets within the City of San José. AT&T and Comcast are also required to set aside funds for these projects.

The proposed Tully Road Rule 20A Underground Utility District (District) is included in the revised 2007/2008 – 2012/13 Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program Three-Year Workplan, approved by Council in April 2008. It meets criteria approved by the CPUC and the criteria established by the City in 1978 to complete projects that front city facilities such as parks, libraries and fire stations.

ANALYSIS

The provisions and procedures to establish underground utility districts are defined in Chapter 15.24 of the San José Municipal Code. The Code requires the Council to conduct a public hearing and adopt an ordinance prior to the establishment of an underground utility district. The proposed District also meets the following California Public Utilities Commission and Municipal Code criteria for establishing underground utility districts:

- Such removal and replacement will eliminate, and such prohibition will avoid, an unusually heavy concentration of poles and overhead wires within said area.
- The public streets or rights-of-way within said area are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic.
- The public streets or rights of way within said area adjoin or pass through a civic area or public recreation area or an area of unusual scenic interest to the general public.

Within the limits of this project, majority of the facilities will be placed in underground vaults, and utility companies may need to install aboveground structures (cabinets) for equipment that cannot be placed in underground vaults. These cabinets may be placed in public right-of-way or on private properties. The size, quantity and actual location of the cabinets will be determined during the design phase of the project. Establishment of the proposed District, as shown on Attachment A, will require the conversion of approximately 3,700 linear feet of aerial facilities to underground facilities.

There is an existing transmission line along Senter Road from Parrott Street to 170 feet south of Tully Road that will be exempted from the project. Per the San José Municipal Code, Chapter 15.24, Section 15.24.230, facilities transmitting electric energy in excess of 34,500 volts are exempted.

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Overall, the removal of aerial wires and utility poles will provide a significant visual benefit to the public.

There are approximately 36 properties adjacent to the proposed District. Seven of the 36 properties currently receiving overhead service will require electrical service conversion work in order to receive electrical power from the underground system. This will require private property owners to perform electrical service panel conversion work on their properties. The cost of conversion for a single-family residential dwelling is typically \$800 to \$2,500. The cost can be significantly higher for multi-family and commercial/business buildings. The Public Utilities Commission provides that Rule 20A funds may be utilized to reimburse private property owners' expenses for conversion work up to \$1,500 per service entrance. Additionally, PG&E, Comcast, and AT&T will provide up to 100 feet of trenching and conduit installation for properties requiring conversion within the District, from the front property line to the building structure. The remaining properties receive utility service from outside the proposed District boundaries or are already receiving service from an underground system and will not be affected by this project.

The utility companies will provide monitoring in archeologically sensitive areas as required by Addendum to a Mitigated Negative Declaration, issued by the Planning, Building and Code Enforcement Department identified as PP08-160.

Construction is scheduled to start in November 2010, and to be completed in January 2012. A more detailed schedule for the establishment and implementation of the proposed District is presented in Attachment B.

EVALUATION AND FOLLOW-UP

Council will conduct a public hearing at the April 14, 2009 City Council meeting. Any comments received by staff from the residents, property owners and other stakeholders will be conveyed to Council.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
 - ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
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- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The action requested by Council does not meet any of the three criteria listed above, but the following outreach will be conducted as part of Section 15.24 of the Municipal Code for the purposes of establishing underground districts.

A community meeting was held on August 19, 2008, to inform the public of this undergrounding project. The property owners attending were concerned with the cost of conversions, process to upgrade services, and phasing of construction (service interruptions). Staff provided information on options to minimize cost of conversions and explained the PG&E policy and procedure for the \$1,500 service conversion reimbursement. Property owners were informed that staff would provide contact information and deadlines to ensure upgrades would be appropriately incorporated into the undergrounding design. Upgrades to existing panels and electrical service, if desired by the property owner, would require additional non-reimbursable costs.

Property owners were assured that the utility companies would minimize impacts of service interruptions and provide approximately one-month notification of service interruptions. It was explained that power interruptions typically last 3 to 4 hours and other utility interruptions are shorter duration. In general, the attendees supported the undergrounding and were satisfied with the responses from staff.

Upon Council's adoption of a resolution setting a public hearing, staff will send notices of the public hearing to all utility companies and owners and occupants of properties adjoining the proposed District. A Notice of Public Hearing will be posted at City Hall and on the City Council's Agenda website.

Should the District be legislated, a Notice of Establishment will be mailed within 20 days of the effective date of the ordinance. Additional correspondence will occur with property owners requiring electrical panel service conversions throughout the proposed project. Prior to the start of construction activities, PG&E will place "Door Hanger" construction notices on adjacent properties.

This memorandum will be posted on the City's website for the March 10, 2009 City Council meeting.

COORDINATION

The establishment of the proposed District and project schedule have been coordinated with the Department of Transportation, PG&E, AT&T, Comcast, County of Santa Clara, Santa Clara

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Valley Water District, City Manager's Budget Office, and Planning, Building and Code Enforcement Department. The required resolution to set the public hearing has been reviewed by the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in the local economy. Most importantly, this Underground Utility District is part of the approved 2007/08 – 2012/13 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: None
COST TO UTILITIES:

| | |
|---------------------------------|-------------|
| PG&E Rule 20A Allocation | \$1,776,000 |
| AT&T Rule 32A.1 | 592,000 |
| Comcast | 592,000 |
| Total Cost to Utility Companies | 2,960,000 |

COST TO CITY:

| | |
|--|--------------------|
| Project Development, Administration and Construction Inspection (Fund 416) | 100,000 |
| City Facilities Conversion (20A) (Fund 429) | 60,000 |
| Total Cost to City | 160,000 |
| TOTAL PROJECT COSTS (ESTIMATED): | \$3,120,000 |
 2. COST ELEMENTS OF AGREEMENT/CONTRACT: 0
 3. SOURCE OF FUNDING: Fund 416 - Underground Utility Fund
Fund 429 - Building and Structure Construction Tax Fund
 4. OPERATING COST: This project has no significant impact on the General Fund operating budget.
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BUDGET REFERENCE

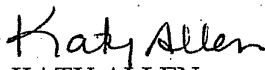
The table below identifies the funds and appropriations proposed to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

| Fund # | Appn. # | Appn. Name | Total Appn. | Amt. for Contract | 2008-2009 Adopted Capital Budget (Page) | Last Budget Action (Date, Ord. No.) |
|--|---------|--|--------------------|-------------------|---|-------------------------------------|
| 416 | 4786 | Underground Utility Admin. (20A) | \$350,000 | N/A | V-26 | N/A |
| 429 | 5063 | Underground Utilities-City Conversions | \$987,000 | N/A | V-1167 | 10/21/08 Ord. No. 28422 |
| Total Current Funding Available | | | \$1,337,000 | | | |

CEQA

CEQA: Addendum to a Mitigated Negative Declaration, PP08-160.

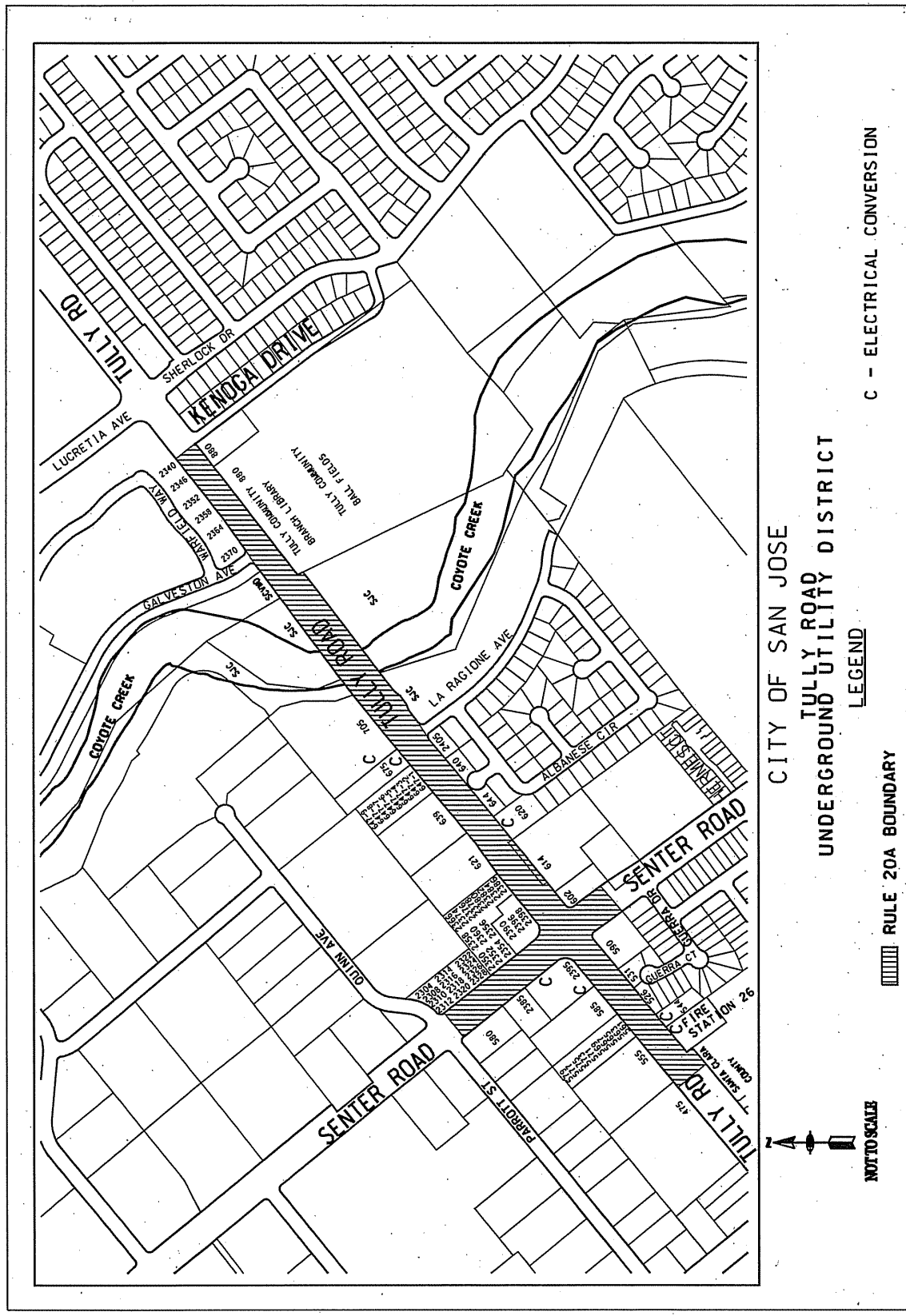
Planning has issued an addendum to a mitigated negative declaration for this project. The Mitigated Negative Declaration identifies a number of mitigation measures that need to be implemented in order to address environmental impacts. These measures and their manner of implementation are identified in the Mitigated Negative Declaration, File No. PP08-257. These measures will be incorporated into the project design and the encroachment permit.


KATY ALLEN
Director, Public Works Department

For questions, please contact TIMM BORDEN, DEPUTY DIRECTOR, at (408) 535-8300.

Attachments
M:SK:RV
Tully Road Rule 20A Underground 01_23_09#1s

ATTACHMENT A



ATTACHMENT B

UNDERGROUND UTILITY DISTRICT along Tully Road, between Kenoga Drive and 720 feet west of Senter Road, and along Senter Road, between Parrott Street and 170 feet south of Tully Road..

Establishment Schedule

| | |
|----------------|---|
| March 10, 2009 | City Council adopts a resolution setting a time and place for a Public Hearing. |
| March 11, 2009 | Director of Public Works mails a notice of Public Hearing to all adjacent property owners. |
| April 6, 2009 | Director of Public Works transmits a report of comments and/or protests received for consideration at the Public Hearing. |
| April 14, 2009 | City Council conducts a Public Hearing and at its conclusion approves an Ordinance establishing Tully Road Rule 20A Underground Utility District. |

Project Implementation Schedule

| | |
|---------------|---|
| August 2009 | Utility companies begin design of substructure, conduit, vaults, electric and cable facilities. |
| March 2010 | Utilities obtain environmental clearances. |
| November 2010 | Construction starts. |
| January 2012 | Utility companies complete connections and remove overhead wires and poles. |
